

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Matter of

Implementation of the  
Cable Television Consumer  
Protection and Competition  
Act of 1992

Rate Regulation

To: The Commission

MM Docket 92-266

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**MOTION TO WAIVE SECTION 1.429(f) OF THE COMMISSION'S RULES**

Ad Hoc Rural Consortium ("ARC"), by its counsel and pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, hereby requests waiver of Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), to accept the late-filed Comments in Partial Opposition to Petition for Reconsideration in MM Docket 92-266. In support of this motion, the following is shown:

**BACKGROUND**

ARC<sup>1</sup> is an alliance of rural telephone companies which provide cable service to their communities pursuant to Section 613(b)(3) of the Communications Act of 1934, as amended. On February 11, 1993, ARC filed Comments with respect to the Commission's

<sup>1</sup> ARC is comprised of the following companies: Moultrie Telecommunications, Inc., Lovington, Illinois; RGA Cable, Toledo, Washington; Cross Cable Television, Inc., Warner, Oklahoma; Waitsfield Cable, Waitsfield, Vermont; Images Cablevision, Inc., Ochelata, Oklahoma; and Sugar Land Telephone Company, Sugar Land, Texas.

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proposals relating to rate regulation and the reduction of regulatory burdens for small cable system operators in MM Docket 92-266. On June 21, 1993, Community Antenna Television Association, Inc. ("CATA") and the Coalition of Small System Operators (the "Coalition") filed Petitions for Reconsideration requesting the Commission to reconsider certain regulations adopted in the docket.

#### **SECTION 1.429(f) 15-DAY FILING DEADLINE**

Section 1.429(f) of the Commission's Rules requires oppositions to petitions to be filed within 15 days after the date of public notice of the petitions filing. 47 C.F.R. § 1.429(f). Counsel for ARC and legal staff were aware of the filing deadline outlined in this section. However, confusion was engendered about the date of public notice of the petitions for reconsideration filed by CATA and the Coalition.

Counsel's legal staff understood that public notice of petitions are usually released on Wednesday. After diligently searching for public notice of CATA's and the Coalition's petitions for reconsideration, counsel's legal staff was unable to find the public notice date. The Commission staff was telephoned twice within a two-week period and asked whether the legal staff had somehow overlooked the public notice.<sup>2</sup> Both inquiries ended with the same response: the public notice had not yet been released. The Commission was called a third time on July 22, 1993, only to learn that the public notice date was July 6, 1993, but that the notice of the filings was released late so that they did not appear in the Daily Digest until Thursday,

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<sup>2</sup> The first inquiry was to the Office of Plans and Policy on July 7, 1993; the second to the Office of Policy Analysis on July 13, 1993.

July 8, 1993. Unfortunately, by the time counsel's legal staff finally determined the actual date of the release, the filing deadline for responses had passed.<sup>3</sup>

Obviously, there was a communication gap between the inquiries made to the Commission staff and the responses received concerning release of public notice. Possibly, counsel's legal staff failed to adequately explain exactly what public notice it was trying to find. Or possibly, Commission staff misinterpreted the request. Whatever the reason, it was undoubtedly an honest mistake by one or both parties.

#### **REQUEST FOR WAIVER OF THE FILING DEADLINE**

The Commission may waive any section of its rules if good cause is shown. 47 C.F.R. § 1.3. In this instance, counsel's legal staff made a good faith effort to determine the public notice date by repeatedly and diligently reviewing the Daily Digests. Concerned that it had somehow missed the public notice date, the Commission staff was telephoned three times for assistance. The Commission before has granted waiver of the rules where counsel had reasonably relied on incorrect advice of Commission staff. *See Clay Television, Inc.*, 64 RR 2d 1129 (1988) (Commission waived rule where television applicant relied on erroneous advice of staff after applicant diligently researched the matter).

Acceptance of ARC's late-filed comments will in no way prejudice CATA or the Coalition.

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<sup>3</sup> The filing deadline was July 21, 1993.

**CONCLUSION**

WHEREFORE, the premises considered, ARC requests waiver of Section 1.429(f) of the Commission's Rules, and accept ARC's late-filed comments.

Respectfully submitted,

By: David A. Irwin

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July 26, 1993

### **CERTIFICATE OF SERVICE**

I, Lorena L. Ferry, hereby certify that on this 26th day of July, 1993, copies of the foregoing "Comments in Partial Opposition to Petition for Reconsideration" have been served either by hand delivery or first-class United States mail, postage prepaid, upon the following:

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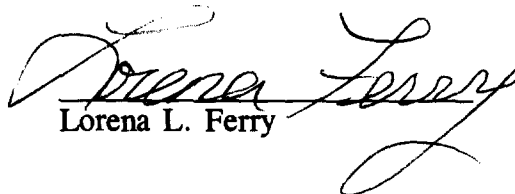
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